



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 12 2013

ENVIRONMENTAL APPEALS BOARD

Amy Semet
220 Riverside Road, Apt. 8F
New York, NY 10069

Dear Ms. Semet:

This is in partial response to your Freedom of Information Act (FOIA) request submitted to the Environmental Protection Agency (EPA) on April 10, 2013. In your request, you sought information related to the

final outcome of ALJ decisions from 1970-1992, when the EAB was formed. Before 1992, appeals of ALJ decisions were decided by the Chief Judicial Officer. Which cases did he/she review and which cases did he overturn? There are also some cases that are reviewed by the Regional Judicial Officer and not the ALJ. What was the final outcome of those cases? Alternatively, I would like access to any database that EPA has on historical adjudicatory proceedings, that would include the name of the case, statute, penalty assessed, ALJ outcome, region, result of appeal or result of EAB appeal. I can cobble together such information myself for the period 1992-present based on info you have on the website, but I would be interested in knowing if EPA has any databases that already have this information collected already, and more importantly, I would like information on how I could find out such information for historical periods. Basically, I would like to track EPA's administrative, civil, and criminal cases from 1974 to present to see basic info on the case, what region it started, what was initial penalty assessed, how the ALJ or Regional Judicial Officer decided, and then what was the result of any appeals either at the EPA or district court.

In response to your request for EPA administrative decisions, please note that EPA does not maintain a single, comprehensive national collection of all the administrative enforcement decisions issued by the Office of Administrative Law Judges (OALJ), Regional Judicial Officers (RJOs), and the Environmental Appeals Board. Decision files are maintained separately by each office, in accordance with the applicable federal records retention schedules (which typically provide for the destruction of older documents after a certain period of years). A general description of the records that are still available from each of the offices follows.

Initial decisions issued by Regional Judicial Officers are maintained by the Regional Hearing Clerks for the respective EPA Regions in the regional offices located throughout the country (see EPA's website at www.epa.gov for the locations and contact information for these offices). Many initial RJO decisions are also available online at

<http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>. The date ranges of the RJO decisions available online vary, as each Region made its own decision as to which decisions to post electronically.

Decisions and orders originating from EPA's OALJ dating back to 1989 are available online at <http://www.epa.gov/oalj/orders.htm>. The Office of the Administrative Law Judges does maintain hard copies of decisions and orders issued prior to 1989 in its Washington, DC office. You are welcome to view those files at your leisure with a 24-hour notice. You can make copies of those while viewing them in the office. No original files will be allowed to leave OALJ.

As you noted in your request, post-1992 decisions of the Environmental Appeals Board (EAB) are available on the EPA website, as well as in the bound volumes of the Environmental Appeals Decisions (volumes 1 through 13), which are available in Federal Depository Libraries. A substantial number of the more significant enforcement appeal final decisions issued by the Board's predecessors prior to 1992 also were published in volumes 1 through 3 of the bound Environmental Appeals Decisions. In addition, the EAB maintains a chronological paper file of some final decisions, including enforcement appeal final decisions, issued by the Board's predecessors between approximately 1979 and March 1992. Please note that this does not purport to be a complete collection, and that some documents over twenty years old have been destroyed pursuant to the relevant records schedule.

If you wish to request that the Board conduct a search of these chronological paper files for pre-1992 documents responsive to your request, please be advised that the estimated fee for processing such a request is \$600, calculated as follows: 20 hours of search time at \$28 per hour and 6 hours of time to scan and convert the responsive documents to portable document format at \$16 per hour. This estimate is based on the rates are contained in 40 C.F.R. §2.107(c)(2)(i)(B) and imposes no charge for the first two hours of search time and for the first 100 pages of duplication, should you seek hard copies. You will only be billed the actual cost amount should the actual cost fall below this estimate. Prepayment is not requested at this time.

If you wish to pursue this request, please furnish written assurance of your willingness to pay the full amount for the search and copying (or scanning) of the documents to Eurika Durr, Clerk of the Board. She may be contacted by email at durr.eurika@epa.gov, by fax at (202) 233-0121, or by mail at U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue, NW, Mail Code 1103M, Washington, DC 20460-0001. You may wish to modify your request to reduce the fee at this time.

Alternatively, you are welcome to view the aforementioned Board chronological files at your leisure with a 24-hour notice the Clerk of the Board by either emailing durr.eurika@epa.gov or calling at (202) 233-0122. No original files will be allowed to leave the Board's office, but you may make copies of those pages you wish to reproduce.

The Environmental Appeals Board will not start processing your request until it has received your written assurance that you will pay the cost as described above. If we do not hear from you within 10 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the Environmental Appeals Board and Office of Administrative Law Judges aspects of your request. If you have any questions related to the Office of Administrative

Law Judges aspect of your request, please contact Bruce Franklin at franklin.bruce@epa.gov or (202) 564-6255. Please direct questions related to the Environmental Appeals Board aspect of your request to Stephanie Yu at yu.stephanie@epa.gov or (202) 233-0115.

With respect to your request for documents pertaining to judicial cases, in a follow-up email to Stephanie Yu dated April 25, 2013, you indicated that you seek

information on EPA's civil enforcement cases, i.e., number and case names of cases they refer to DOJ by region, etc). On its website, EPA creates numerous charts with this data, but the underlying data (case names, not just numbers) is not on the website. The website is

<http://www.epa.gov/compliance/data/results/nets.html> and the charts I am referring to are the two going back to 1974 under Long term Trends- Activities - Civil Judicial Referrals and Long term Trends - results-Enforcements, in which EPA lays out the number of cases they refer to DOJ going back to 1974 as well as the penalties they recover. This is in aggregate form, however. The numbers also are not broken down by region (prior to 2003). Which cases were used to create this data is unclear. EPA on its website only has civil cases going back to 1998 - see

http://cfpub.epa.gov/enforcement/cases/index.cfm?sortby=RELEASE_DATE#yearlist. I would like to know the cases that EPA refers to DOJ for prosecution for enforcement prior to the years on what the website offers.

The information on EPA's civil enforcement cases is maintained by the Agency's Office of Enforcement and Compliance Assurance (OECA), as well as by the EPA regional offices. OECA is still in the process of reviewing its records to determine what information is available and can be provided to you in response to this request. The agency will provide a further response when that review has been completed.

Sincerely,



Catherine R. McCabe
Environmental Appeals Judge

cc:

Bruce Franklin, Acting Director
Office of Administrative Law Judges
Mail Code 1900R

Maya Lee Newman, FOIA Specialist
Mail Code 2201A